IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10795 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANUP INDUSTRIES LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10795 of 2001

MR ASPI M KAPADIA for Petitioner No. 1

MR M.R.MENGDEY, AGP for Respondent Nos.1 & 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 03/07/2002

ORAL JUDGEMENT

Rule. Mr.Mengdey waives service of rule on behalf of Respondent Nos.1 and 2.

2. The petitioner is a Public Limited Company registered under relevant provisions of the Companies Act, 1956. The petitioner was originally incorporated as a Private Limited Company under the name of Anup Industries Private Limited on 21st August, 1961. As required by the provisions of the Companies Act, the petitioner at its extraordinary general meeting held on

12th December, 1994 passed a Special Resolution to change its name from Anup Industries Private Limited to Anup Industries Limited. The Registrar of Companies, Gujarat and Dadra and Nagar Haveli issued certificate of change on 15th December, 1994 in pursuance of Section 23(1) of the Companies Act. One of the properties held by the Private Limited Company was a lease of two industrial plots from Gujarat Industrial Development Corporation (GIDC) and as required by them two declarations were made on 17th August, 1999 for the limited purpose of placing it on record of GIDC. The said declarations came to be presented before the Sub-Registrar, Valsad. On 13th August, 2001 the respondent issued two notices stating why the authority should not recover deficit stamp duty and penalty in relation to the two declarations made for the purposes of records of GIDC. The petitioner replied to the show-cause notices by two letters of 23rd August, 2001. However, the respondent - authorities did not accept the explanation and issued further notices on 16th October, 2001. The aforesaid four notices, two dated 13th August, 2001 and two dated 16th October, 2001 are challenged by way of this petition.

3. Mr.A.M.Kapadia, learned advocate for the petitioner submitted that the respondents have no authority or jurisdiction to issue the impugned notices and consequentially demand payment of either stamp duty or penalty as proposed, because the provisions of the Bombay Stamp Act, 1958 do not permit the respondent to undertake such an exercise. It was further contended that the respondent - authorities have shown total non-application of mind and as such the impugned notices do not point out the provisions of the Bombay Stamp Act, 1958 under which the said demands have been raised.

4. As against this, learned A.G.P. Mr.Mengdey appearing on behalf of the respondents relied upon the definitions of 'Conveyance' in Section 2(g) and 'Instrument' in Section 2(l) of the Bombay Stamp Act, 1958, in support of his contention that the declaration made by the petitioner - Company amounted to an instrument under which the leased out plots were conveyed from Private Limited Company to a Limited Company resulting in a transaction of transfer which was exigible to stamp duty. That the petitioner having failed to affix necessary stamp on the said instrument it became liable to pay the deficit stamp duty and penalty under relevant provisions of the Act. Reliance was also placed on Articles 20 and 57 of the Bombay Stamp Act,1958.

5. Having heard both the sides it is apparent that the impugned notices cannot be allowed to be stand.

Articles 20 and 57 of the Bombay Stamp Act, 1958 which respectively deal with 'Conveyance' and 'Transfer of Lease' specifically require that stamp duty has to be computed in relation to the amount of the consideration for conveyance. Even if for the purpose of argument the contention on behalf of the respondents is accepted that the declarations fall within the meaning of conveyance, in absence of any consideration the computation provisions fail. It is an admitted position as can be seen from the declarations that as per paragraph 3 it is specifically stated in unequivocal terms that no consideration is paid. If this be the position the provisions on which reliance has been placed by the respondents cannot be invoked against the petitioner. The provisions of the Bombay Stamp Act, 1958 have to be read together i.e. the charging section and the computation provisions constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. [Commissioner of Income-Tax, Bangalore Vs. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC)].

6. In support of the various contentions raised on behalf of the petitioner, the learned advocate relied upon decisions of (i) SOLVEX OILS & FERTILIZERS VS. BHANDARI CROS-FIELDS (P) LTD., 1978 Company Cases, 260 (ii) PIONEER PROTECTIVE GLASS FIBRE PVT. LTD. VS. FIBRE GLASS PILKINGTON LTD., 1986 Company Cases 707.

Thus, the position in law is that by mere change of name from a Private Limited Company to Limited Company there is no change of entity as such all actions of the Private Limited Company shall continue against the Public

7. In light of what is stated hereinbefore, this petition is allowed. Impugned notices dated 13-08-2001 and 16-10-2001 (Annexures - 'A', 'B', 'C' & 'D') are hereby quashed and set aside.

The petition is allowed accordingly. Rule is made absolute. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'